

Douglas M. Foley (VSB No. 34364)  
 Bryan A. Fratkin (VSB No. 38933)  
 McGUIREWOODS LLP  
 One James Center  
 901 E. Cary Street  
 Richmond, Virginia 23219  
 (804) 775-1000

Counsel to the Debtors and  
 Debtors in Possession

UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION

- - - - -	X	
In re:	:	Chapter 11
	:	
CIRCUIT CITY STORES, INC.,	:	Case No. 08-35653 (KRH)
<u>et al.</u> ,	:	
	:	
Debtors.	:	Jointly Administered
- - - - -	X	- - - - -
CIRCUIT CITY STORES, INC.,	X	Adversary Proceeding
	:	No: _____
Plaintiff,	:	
	:	
v.	:	
	:	
CREATIVE LABS, INC.,	:	
	:	
Defendant.	:	
- - - - -	:	
	X	

**COMPLAINT**

The debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"),<sup>1</sup> by and

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia,

through their undersigned counsel, for their Complaint against the above-captioned defendant, Creative Labs, Inc. (the "Defendant"), and, in support thereof, allege as follows:

#### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

2. This action is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (B), (C), (E), and (O).

3. Venue of these cases and this adversary proceeding in this district is proper under 28 U.S.C. §§ 1408 and 1409.

#### **BACKGROUND**

4. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

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Inc. (2821), Circuit City Proper ties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc.(6796), Sky Venture Corp. (0311), PRAHS, Inc.(n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address was 9950 Mayland Drive, Richmond, Virginia 23233 and currently is 4951 Lake Brook Drive, Glen Allen, Virginia 23060.

6. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the "Creditors' Committee"). To date, no trustee or examiner has been appointed in these chapter 11 cases.

7. On November 12, 2008, the Court appointed Kurtzman Carson Consultants LLC ("KCC") as claims, noticing and balloting agent for the Debtors in these chapter 11 cases pursuant to 28 U.S.C. § 156(c).

8. On January 16, 2009, the Court authorized the Debtors, among other things, to conduct going out of business sales at the Debtors' remaining 567 stores pursuant to an agency agreement (the "Agency Agreement") between the Debtors and a joint venture, as agent (the "Agent"). On January 17, 2009, the Agent commenced going out of business sales pursuant to the Agency Agreement at the Debtors remaining stores. As of March 8, 2009, the going out of business sales at the Debtors' remaining stores had been completed (the "Liquidation").

#### **PARTIES**

9. Prior to the Liquidation, the Debtors were a leading specialty retailer of consumer electronics and operated large nationwide electronics stores that sold,

among other things, televisions, home theatre systems, computers, camcorders, furniture, software, imaging and telecommunications products, and other audio and video electronics.

10. Defendant is a California corporation with its principal place of business in Milpitas, California.

**FACTS**

11. The Debtors and the Defendant are parties to a certain Direct Retail Agreement for the sale of goods produced by the Defendant in the Debtors' stores (as supplemented and amended, the "Contract"). The Contract is attached hereto as Exhibit A.<sup>2</sup>

12. Pursuant to the Contract, the Debtors were appointed, on a non-exclusive basis, as an authorized retailer for the sale of Defendants' products. See Contract, at ¶ 1.1. Pursuant to the Contract, the Debtors obtained certain of the Defendant's products directly from the Defendant and marketed and sold such products to the Debtors' customers in the United States and the United States' territories. See Contract, at ¶ 1.1.

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<sup>2</sup> The Contract provides for certain confidential and/or proprietary information. Accordingly, the Debtors will file a motion to file the Contract under seal.

13. Pursuant to the Contract, the Defendant was obligated to remit to the Debtors the following, and the Debtors were entitled to payment from the Defendant for the following:

- a. Receivables for advertising and promotion, including but not limited to Market Development Funds (as defined in the Contract). See Contract, at ¶¶ 2.6, 2.7.
- b. Debits pursuant to Defendant's price protection policy. See Contract, at ¶ 5.2.
- c. Debits for the return of defective products shipped and paid for by Debtors. See Contract, at ¶ 5.5.

14. Prepetition and postpetition through the Liquidation, the Debtors performed these services, and demanded payment. To date, the Defendant is indebted to the Debtors for the following amounts:

<b>Creative Labs</b>	
Invoices Deductions Repay	\$45,355.73
Invoices/Returns	\$20,684.20
Pricing Reductions	\$26,227.80
Shortage Deductions	\$491.90
Accounts Receivable	\$255,332.58
Accounts Receivable	\$618,150.19
Chargebacks	
	<hr/>
<b><u>TOTAL</u></b>	<b>\$966,242.40</b>
	<hr/> <hr/>

(collectively, the "Unpaid Obligations").

15. On May 29, 2009, the Debtors sent a demand letter to the Defendant for the Unpaid Obligations (the "Demand Letter"). A copy of the Demand Letter is attached hereto as Exhibit B and is incorporated herein by reference.

16. On July 17, 2009, the Debtors sent a second demand letter to the Defendant for Unpaid Obligations (the "Second Demand Letter"). A copy of the Second Demand Letter is attached hereto as Exhibit C and is incorporated herein by reference.

17. Further, on or within ninety (90) days prior to the Petition Date (the "Preference Period"), the Debtors made multiple transfers of interest of the Debtors' property to or for the benefit of the Defendant in an amount not less than \$5,557,923.73, as set forth hereto on Exhibit D.

18. After taking into account certain defenses, the Debtors have excluded certain Transfers to which there appear to have been subsequent new value provided or appear to be substantially contemporaneous exchanges pursuant to 547(c)(1) and (4) of the Bankruptcy Code. Exhibit E reflects the Debtors' current knowledge of the recoverable transfers made by the Debtors to the Defendant during the Preference Period. During the course of this adversary proceeding, the Debtors (through discovery or otherwise) may

learn of additional transfers made to Defendant during the Preference Period. The Debtors intend to avoid and recover all such transfers, whether listed on Exhibit E or not, in an amount not less than \$1,673,473.60 (collectively, the "Transfers").

**COUNT I**

**(BREACH OF CONTRACT)**

19. The Debtors hereby incorporate by reference the allegations set forth in paragraphs 1 through 18 of this Complaint as if fully restated herein.

20. Pursuant to the Contract, Defendant agreed to pay to the Debtors the Unpaid Obligations.

21. The Contract is a valid and enforceable contract.

22. Defendant's failure to compensate the Debtors for the Unpaid Obligations in the amount of \$966,242.40 constitutes a material breach of Defendant's obligations under the Contract.

23. As a direct and proximate result of Defendant's breaches, the Debtors have incurred damages in an amount not less than \$966,242.40, plus attorneys' fees, costs, expenses, and interest.

24. Accordingly, the Debtors are entitled to a judgment against Defendant in an amount not less than the

Unpaid Obligations of \$966,242.40, plus costs, fees, expenses, including attorneys' fees, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations.

**COUNT II**

**(TURNOVER OF PROPERTY PURSUANT TO 11 U.S.C. § 542)**

25. The Debtors hereby incorporate by reference the allegations set forth in paragraphs 1 through 18 of this Complaint as if fully restated here.

26. In the alternative to Count I, but without waiving any allegation contained therein, the Debtors make the following allegations in support of Count II.

27. Defendant is in possession, custody, and control of Unpaid Obligations in an amount not less than \$966,242.40, plus costs, fees, expenses, including attorneys' fees, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations.

28. The Unpaid Obligations constitute valid and existing debts, due and owing by Defendant to the Debtors.

29. The Unpaid Obligations are property of the Debtors' estate under section 541 of the Bankruptcy Code and



constitute debts that are matured, payable on demand, or payable on order.

30. Accordingly, pursuant to section 542 of the Bankruptcy Code, Defendant should be compelled to immediately turn over and deliver to the Debtors the Unpaid Obligations in an amount not less than \$966,242.40, plus costs, fees, expenses, including attorneys' fees, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations.

**COUNT III**

**(UNJUST ENRICHMENT)**

31. The Debtors hereby incorporate by reference the allegations set forth in paragraphs 1 through 18 of this Complaint as if fully restated here.

32. In the alternative to Counts I and II but without waiving any allegation contained therein, the Debtors make the following allegations in support of Count III.

33. The Debtors conferred a benefit upon Defendant pursuant to the Contract and described herein in Paragraph 13.

34. The Debtors reasonably expected to be compensated by Defendant in an amount not less than \$966,242.40 plus

costs, expenses, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations.

35. The Defendant's benefit without just compensation to the Debtors has unjustly enriched the Defendant in an amount not less than \$966,242.40 plus costs, fees, expenses, including attorneys' fees, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations.

36. The Debtors have no adequate remedy at law to recover the Unpaid Obligations.

37. Accordingly, as a result of Defendant's unjust enrichment at the Debtors' expense, the Debtors are entitled to restitution from the Defendant in an amount not less than \$966,242.40, plus costs, fees, expenses, including attorneys' fees, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations.

#### COUNT IV

##### **(RECOVERY OF PREFERENTIAL TRANSFERS PURSUANT TO 11 U.S.C. §§ 547(b) and 550)**

38. The Debtors hereby incorporate by reference the allegations set forth in paragraphs 1 through 37 of this

Complaint as if fully restated here.

39. The Transfers were made to or for the benefit of Defendant, a creditor of one or more of the Debtors.

40. The Transfers were made for or on account of an antecedent debt or debts owed by one or more of the Debtors before such Transfers were made.

41. The Transfers were made during the Preference Period.

42. The Transfers were made while the Debtors were insolvent.

43. The Transfers enabled the Defendant to receive greater value than the Defendant would have received if (i) Debtors' cases were cases under chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Defendant received payment on account of the debt paid by the Transfers to the extent provided by the provisions of the Bankruptcy Code.

44. Each of the Transfers constitutes an avoidable preference pursuant to 11 U.S.C. § 547(b).

45. Defendant is either the initial transferee of the Transfers, the entity for whose benefit the Transfers were made, or an immediate or mediate transferee of the Transfers.

46. Debtors are entitled to recover not less than \$1,673,473.60 pursuant to 11 U.S.C. § 550(a).

**PRAYER FOR RELIEF**

WHEREFORE, the Debtors respectfully pray that the Court:

- i. On Count I, enter judgment against Defendant for breach of contract and award the Debtors damages in an amount not less than \$966,242.40, plus costs, fees, expenses, including attorneys' fees, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations; or, in the alternative,
- ii. On Count II, order Defendant to turn over and deliver to the Debtors the Unpaid Obligations in an amount in not less than \$966,242.40, plus costs, fees, expenses, including attorneys' fees, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations; or, in the alternative,
- iii. On Count III, enter judgment against the Defendant for unjust enrichment and award the Debtors

restitution on account of the Defendant's unjust enrichment in an amount not less than \$966,242.40, plus costs, fees, expenses, including attorneys' fees, and interest at the higher of the legal rate or the rate set forth in the Contract or in any agreements governing the Unpaid Obligations;

- iv. On Count IV, enter an Order pursuant to 11 U.S.C. § 550 for avoidance of a preferential transfers pursuant to 11 U.S.C. § 547(b) in an amount not less than \$1,673,473.60, plus costs, fees, expenses, including attorneys' fees, and interest at the legal rate; and
- v. Grant the Debtors such other and further relief the Court deems just and appropriate.

Dated: Richmond, Virginia McGUIREWOODS LLP  
November 23, 2009

/s/ Douglas M. Foley  
Douglas M. Foley (VSB No. 34364)  
Bryan A. Fratkin (VSB No. 38933)  
One James Center  
901 E. Cary Street  
Richmond, Virginia 23219  
(804) 775-1000

Counsel for Debtors and Debtors  
in Possession

**Direct Retail Agreement**

**[TO BE FILED UNDER SEAL]**



## Circuit City Stores, Inc.

P.O. Box 5695

Glen Allen, Va 23058-5695

Friday, May 29, 2009

CREATIVE LABS

Re: Demand for Payment

Dear Sir or Madam:

As you no doubt know by now, on November 10, 2008 Circuit City Stores, Inc. and certain of its subsidiaries (collectively, "Circuit City") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Eastern District of Virginia, Richmond Division. As part of liquidation and wind down of Circuit City under its chapter 11 cases, we have completed a review of amounts unpaid by your company to Circuit City, as evidenced by the attached. Based on this information, the total amount due and outstanding from your company to Circuit City is listed below:

Total Due: \$966,242.40

By this letter, we hereby make demand for payment of the unpaid balance immediately. If we do not receive payment within the next two weeks it is our intent to refer the matter to our counsel to pursue payment in the Bankruptcy Court in Richmond, Virginia.

**Wire Instructions:**

Account Name: ☐ Circuit City Stores, Inc.  
ABA/Routing #: ☐ 051400549  
Account #: ☐ 2055275431509  
Bank: ☐ Wachovia Bank  
☐ 10401 Deerwood Park Blvd, Building 1  
☐ Jacksonville, FL 32256

Sincerely,

Brandi Fose  
Circuit City Accounting Department

Brandi\_Fose@ccswinddown.com

cc: ☐ ☐ Daniel W. Ramsey, Esq.

LTRDMD01



**Merchandise Payable Summary**

<b>Vendor Number</b>	<b>Status</b>	<b>Name</b>	<b>Category</b>	<b>Amount</b>
0000000697	PRE	CREATIVE LABS	Invoice Deduction Repay	\$44,863.83
0000000697	PRE	CREATIVE LABS	Invoices / Returns	\$85,959.60
0000000697	PRE	CREATIVE LABS	Pricing Deductions	\$26,227.80
0000071011	POST	CREATIVE LABS	Invoice Deduction Repay	\$491.90
0000071011	POST	CREATIVE LABS	Invoices / Returns	(\$65,275.40)
0000071011	POST	CREATIVE LABS	Shortage Deductions	\$491.90
<b>Payables Total:</b>				<b>\$92,759.63</b>



Accounts Receivable Detail

Vendor No	Vendor Name	Receivable Type	Type	Tran Code	Key Rec No	Ref No	Description	Receivable	Status
000000697	CREATIVE LABS		MDF	ADJ	334579	11-08	11-08 FROM 697 TO 71011	(\$69,432.32)	PRE
000000697	CREATIVE LABS		MDF	ADJ	339874	THRU	THRU 06-08 MDF5 V697	(\$31,520.29)	PRE
000000697	CREATIVE LABS		MDF	ADJ	339870	08/08	08/08 RTV V697	(\$16,155.15)	PRE
000000697	CREATIVE LABS		MDF	ADJ	339869	07/08	07/08 RTV V697	(\$10,282.74)	PRE
000000697	CREATIVE LABS		MDF	ADJ	339871	09/08	09/08 RTV V697	(\$6,583.84)	PRE
000000697	CREATIVE LABS		MDF	RTV	332496	10/08	10/08 RTV	(\$4,922.27)	PRE
000000697	CREATIVE LABS		MDF	RTV	333916	11/08	11/08 RTV	(\$1,686.14)	PRE
000000697	CREATIVE LABS		MDF	ADJ	339863	07/08	07/08 RTV V697	(\$709.96)	PRE
000000697	CREATIVE LABS		MDF	ADJ	339864	08/08	08/08 RTV V697	(\$530.62)	PRE
000000697	CREATIVE LABS		MDF	ADJ	339865	09/08	09/08 RTV V697	(\$435.16)	PRE
000000697	CREATIVE LABS		MDF	ADJ	334577	11-08	11-08 FROM 697 TO 71011	(\$191.20)	PRE
000000697	CREATIVE LABS		MDF	RTV	333915	11/08	11/08 RTV	(\$85.77)	PRE
000000697	CREATIVE LABS		MDF	ADJ	339872	PPNET	PPNET 07-08 MDF5 V697	(\$12.28)	PRE
000000697	CREATIVE LABS		MDF	BB	39784		DECEMBER BB VEN 000697	\$0.00	PRE
000000697	CREATIVE LABS		MDF	ADJ	339862	09-08	SEPTEMBER BB VEN 697	\$225.40	PRE
000000697	CREATIVE LABS		MDF	BB	39624		NOVEMBER BB VEN 000697	\$939.80	PRE
000000697	CREATIVE LABS		MDF	ADJ	339861	08-08	AUGUST BB VEN 697	\$2,008.20	PRE
000000697	CREATIVE LABS		MDF	ADJ	339860	07-08	JULY BB VEN 697	\$3,463.60	PRE
000000697	CREATIVE LABS		MDF	ADJ	339868	09-08	SEPTEMBER BB VEN 697	\$20,434.36	PRE
000000697	CREATIVE LABS		MDF	ADJ	339866	07-08	JULY BB VEN 697	\$54,882.04	PRE
000000697	CREATIVE LABS		MDF	BB	39482		OCTOBER BB VEN 000697	\$54,970.82	PRE
000000697	CREATIVE LABS		MDF	ADJ	339867	08-08	AUGUST BB VEN 697	\$55,112.01	PRE
000000697	CREATIVE LABS		MDF	BB	39623		NOVEMBER BB VEN 000697	\$77,741.85	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	333685	96155	96155DV#697	\$352.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	340239	98847	98847CV#697	\$1,927.50	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	336581	93416	93416CV#697	\$2,840.68	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	ADJ	337145	93078	93078D V697	\$2,944.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	ADJ	337151	96154	96154D V697	\$3,392.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	333123	96162	96162DV#697	\$3,480.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	ADJ	337153	93409	93409D V697	\$4,132.58	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	ADJ	337142	93075	93075D V697	\$4,472.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	ADJ	337148	93814	93814D V697	\$5,610.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	335976	94107	94107-3DV#697	\$6,250.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	335975	94107	94107-2DV#697	\$6,250.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	335974	94107	94107-1DV#697	\$6,250.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	335977	94107	94107-4DV#697	\$6,250.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	340228	98834	98834CV#697	\$39,878.34	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	335972	94106	94106-2CV#697	\$200,000.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	335971	94106	94106-1CV#697	\$200,000.00	PRE
0000071011	CREATIVE LABS		MDF	BB	40076		FEBRUARY BB VEN 071011	\$24.60	POST
0000071011	CREATIVE LABS		MDF	ADJ	334578	11-08	11-08 FROM 697 TO 71011	\$191.20	POST
0000071011	CREATIVE LABS		MDF	BB	39868		DECEMBER BB VEN 071011	\$1,243.00	POST
0000071011	CREATIVE LABS		MDF	BB	40015		JANUARY BB VEN 071011	\$5,378.29	POST

0000071011	CREATIVE LABS		MDF	BB	39867		DECEMBER BB VEN 071011	\$23,851.17	POST
0000071011	CREATIVE LABS		MDF	BB	39728		NOVEMBER BB VEN 071011	\$27,981.66	POST
0000071011	CREATIVE LABS		MDF	ADJ	334580	11-08	11-08 FROM 697 TO 71011	\$69,432.32	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	336497	96253	96253CV#71011	\$330.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	335096	96598	96598DV#71011	\$512.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	335046	96597	96597DV#71011	\$512.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	334822	96595	96595DV#71011	\$672.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	334805	96594	96594DV#71011	\$680.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	ADJ	337926	97259	97259DV#71011	\$2,128.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	335982	98717	98717CV#71011	\$2,574.41	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	ADJ	337905	96592	96592DV#71011	\$3,520.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	ADJ	337906	96593	96593DV#71011	\$4,640.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	334798	97482	97482DV#71011	\$8,623.78	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	335087	98128	98128DV#71011	\$10,000.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	335045	96596	96596DV#71011	\$14,352.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	ADJ	337916	97011	97011DV#71011	\$75,576.90	POST

**Total Receivable:** \$873,482.77

McGuireWoods LLP  
One James Center  
901 East Cary Street  
Richmond, VA 23219-4030  
Phone: 804.775.1000  
Fax: 804.775.1061  
www.mcguirewoods.com

Bryan A. Stark  
Direct: 804.775.1086

McGUIREWOODS

bstark@mcguirewoods.com  
Direct Fax: 804.698.2263

July 17, 2009

**VIA OVERNIGHT MAIL  
AND ELECTRONIC MAIL**

Christina Andresen  
Creative Labs, Inc.  
1901 McCarthy Blvd  
Milpitas, CA 95035

RE: *In re Circuit City Stores, Inc., et al. Chapter 11  
Case No. 08-35653(KRH) (Bankr. E.D. Va. 2008)*

Dear Ms. Andresen:

Please be advised that this firm serves as general bankruptcy counsel to Circuit City Stores, Inc. ("Circuit City") and certain of its subsidiaries, debtors and debtors in possession (collectively, the "Debtors") in the above-referenced chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court").

The Debtors' books and records show that \$966,242.40 remains due and outstanding from Creative Labs, Inc. ("Creative Labs") to the Debtors' bankruptcy estates.

The Debtors initially demanded payment of these amounts by letter dated May 29, 2009. A copy of the original demand letter is attached hereto as Exhibit A, which original demand letter provides additional details regarding the basis for the amounts due and outstanding. As of this date, the Debtors have not received payment of any portion of the due and outstanding amounts from Creative Labs.

Accounts receivable constitute property of the Debtors' bankruptcy estates. See In re Bay Vista of Virginia, Inc., 394 B.R. 820, 836 (Bankr. E.D. Va. 2008). As Creative Labs has failed to remit payment to the Debtors with regard to the amounts due and outstanding, Creative Labs is in unlawful possession of property of the Debtors' bankruptcy estates. Moreover, the Debtors have demanded that Creative Labs immediately turn over such property to the Debtors, but Creative Labs has ignored the Debtors' demands. This knowing and willful failure to turn over the Debtors' property may constitute, among other things, a violation of the automatic stay pursuant to section 362(a) of title 11, United States Code (the "Bankruptcy Code"). See In re Mountaineer Coal Co., Inc., 247 B.R. 633, 642 (Bankr. W.D. Va. 2000).

**This letter is a final demand for payment. If the Debtors do not receive Creative Labs' payment of \$966,242.40 within ten (10) days after the date of this letter, the Debtors may be compelled to commence an adversary proceeding against Creative Labs**



July 17, 2009  
Page 2

**in the Bankruptcy Court to recover the property, together with damages, including punitive damages, as well as costs, expenses, and attorneys' fees, for violations of the Bankruptcy Code. Such a proceeding would require Creative Labs or its lawyer to respond and appear in the Bankruptcy Court.**

I am available to discuss this matter with you or, if you have retained outside counsel, your counsel.

Best regards,

A handwritten signature in black ink, appearing to read 'Bryan A. Stark', with a long horizontal flourish extending to the right.

Bryan A. Stark

cc: James Marcum (by email)  
Brandi Fose (by email)  
Suzanne Rufflo (by email)  
Daniel Kerns (by email)

## Circuit City Stores, Inc.

P.O. Box 5695  
Glen Allen, Va 23058-5695

Friday, May 29, 2009

CREATIVE LABS

Re: Demand for Payment

Dear Sir or Madam:

As you no doubt know by now, on November 10, 2008 Circuit City Stores, Inc. and certain of its subsidiaries (collectively, "Circuit City") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Eastern District of Virginia, Richmond Division. As part of liquidation and wind down of Circuit City under its chapter 11 cases, we have completed a review of amounts unpaid by your company to Circuit City, as evidenced by the attached. Based on this information, the total amount due and outstanding from your company to Circuit City is listed below:

Total Due: \$966,242.40

By this letter, we hereby make demand for payment of the unpaid balance immediately. If we do not receive payment within the next two weeks it is our intent to refer the matter to our counsel to pursue payment in the Bankruptcy Court in Richmond, Virginia.

Wire Instructions:

Account Name: ☐ Circuit City Stores, Inc.  
ABA/Routing #: ☐ 051400549  
Account #: ☐ 2055275431509  
Bank: ☐ Wachovia Bank  
☐ 10401 Deerwood Park Blvd, Building 1  
☐ Jacksonville, FL 32256

Sincerely,

Brandi Fose  
Circuit City Accounting Department

Brandi\_Fose@ccswinddown.com

cc: ☐ Daniel W. Ramsey, Esq.



LTRDMD01

**Merchandise Payable Summary**

<b>Vendor Number</b>	<b>Status</b>	<b>Name</b>	<b>Category</b>	<b>Amount</b>
0000000697	PRE	CREATIVE LABS	Invoice Deduction Repay	\$44,863.83
0000000697	PRE	CREATIVE LABS	Invoices / Returns	\$85,959.60
0000000697	PRE	CREATIVE LABS	Pricing Deductions	\$26,227.80
0000071011	POST	CREATIVE LABS	Invoice Deduction Repay	\$491.90
0000071011	POST	CREATIVE LABS	Invoices / Returns	(\$65,275.40)
0000071011	POST	CREATIVE LABS	Shortage Deductions	\$491.90
<b>Payables Total:</b>				<b>\$92,759.63</b>

Accounts Receivable Detail

Vendor No	Vendor Name	Receivable Type	Type	Tran Code	Key Rec No	Ref No	Description	Receivable	Status
000000697	CREATIVE LABS		MDF	ADJ	334579	11-08	11-08 FROM 697 TO 71011	(\$69,432.32)	PRE
000000697	CREATIVE LABS		MDF	ADJ	339874	THRU	THRU 06-08 MDF5 V697	(\$31,520.29)	PRE
000000697	CREATIVE LABS		MDF	ADJ	339870	08/08	08/08 RTV V697	(\$16,155.15)	PRE
000000697	CREATIVE LABS		MDF	ADJ	339869	07/08	07/08 RTV V697	(\$10,282.74)	PRE
000000697	CREATIVE LABS		MDF	ADJ	339871	09/08	09/08 RTV V697	(\$6,583.84)	PRE
000000697	CREATIVE LABS		MDF	RTV	332496	10/08	10/08 RTV	(\$4,922.27)	PRE
000000697	CREATIVE LABS		MDF	RTV	333916	11/08	11/08 RTV	(\$1,686.14)	PRE
000000697	CREATIVE LABS		MDF	ADJ	339863	07/08	07/08 RTV V697	(\$709.96)	PRE
000000697	CREATIVE LABS		MDF	ADJ	339864	08/08	08/08 RTV V697	(\$530.62)	PRE
000000697	CREATIVE LABS		MDF	ADJ	339865	09/08	09/08 RTV V697	(\$435.16)	PRE
000000697	CREATIVE LABS		MDF	ADJ	334577	11-08	11-08 FROM 697 TO 71011	(\$191.20)	PRE
000000697	CREATIVE LABS		MDF	RTV	333915	11/08	11/08 RTV	(\$85.77)	PRE
000000697	CREATIVE LABS		MDF	ADJ	339872	PPNET	PPNET 07-08 MDF5 V697	(\$12.28)	PRE
000000697	CREATIVE LABS		MDF	BB	39784		DECEMBER BB VEN 000697	\$0.00	PRE
000000697	CREATIVE LABS		MDF	ADJ	339862	09-08	SEPTEMBER BB VEN 697	\$225.40	PRE
000000697	CREATIVE LABS		MDF	BB	39624		NOVEMBER BB VEN 000697	\$939.80	PRE
000000697	CREATIVE LABS		MDF	ADJ	339861	08-08	AUGUST BB VEN 697	\$2,008.20	PRE
000000697	CREATIVE LABS		MDF	ADJ	339860	07-08	JULY BB VEN 697	\$3,463.60	PRE
000000697	CREATIVE LABS		MDF	ADJ	339868	09-08	SEPTEMBER BB VEN 697	\$20,434.36	PRE
000000697	CREATIVE LABS		MDF	ADJ	339866	07-08	JULY BB VEN 697	\$54,882.04	PRE
000000697	CREATIVE LABS		MDF	BB	39482		OCTOBER BB VEN 000697	\$54,970.82	PRE
000000697	CREATIVE LABS		MDF	ADJ	339867	08-08	AUGUST BB VEN 697	\$55,112.01	PRE
000000697	CREATIVE LABS		MDF	BB	39623		NOVEMBER BB VEN 000697	\$77,741.85	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	333685	96155	96155DV#697	\$352.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	340239	98847	98847CV#697	\$1,927.50	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	336581	93416	93416CV#697	\$2,840.68	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	ADJ	337145	93078	93078D V697	\$2,944.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	ADJ	337151	96154	96154D V697	\$3,392.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	333123	96162	96162DV#697	\$3,480.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	ADJ	337153	93409	93409D V697	\$4,132.58	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	ADJ	337142	93075	93075D V697	\$4,472.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	ADJ	337148	93814	93814D V697	\$5,610.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	335976	94107	94107-3DV#697	\$6,250.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	335975	94107	94107-2DV#697	\$6,250.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	335974	94107	94107-1DV#697	\$6,250.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	335977	94107	94107-4DV#697	\$6,250.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	340228	98834	98834CV#697	\$39,878.34	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	335972	94106	94106-2CV#697	\$200,000.00	PRE
000000697	CREATIVE LABS	Chargebacks VF	AA	AA	335971	94106	94106-1CV#697	\$200,000.00	PRE
0000071011	CREATIVE LABS		MDF	BB	40076		FEBRUARY BB VEN 071011	\$24.60	POST
0000071011	CREATIVE LABS		MDF	ADJ	334578	11-08	11-08 FROM 697 TO 71011	\$191.20	POST
0000071011	CREATIVE LABS		MDF	BB	39868		DECEMBER BB VEN 071011	\$1,243.00	POST
0000071011	CREATIVE LABS		MDF	BB	40015		JANUARY BB VEN 071011	\$5,378.29	POST

0000071011	CREATIVE LABS		MDF	BB	39867		DECEMBER BB VEN 071011	\$23,851.17	POST
0000071011	CREATIVE LABS		MDF	BB	39728		NOVEMBER BB VEN 071011	\$27,981.66	POST
0000071011	CREATIVE LABS		MDF	ADJ	334580	11-08	11-08 FROM 697 TO 71011	\$69,432.32	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	336497	96253	96253CV#71011	\$330.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	335096	96598	96598DV#71011	\$512.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	335046	96597	96597DV#71011	\$512.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	334822	96595	96595DV#71011	\$672.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	334805	96594	96594DV#71011	\$680.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	ADJ	337926	97259	97259DV#71011	\$2,128.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	335982	98717	98717CV#71011	\$2,574.41	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	ADJ	337905	96592	96592DV#71011	\$3,520.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	ADJ	337906	96593	96593DV#71011	\$4,640.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	334798	97482	97482DV#71011	\$8,623.78	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	335087	98128	98128DV#71011	\$10,000.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	AA	335045	96596	96596DV#71011	\$14,352.00	POST
0000071011	CREATIVE LABS	Chargebacks VF	AA	ADJ	337916	97011	97011DV#71011	\$75,576.90	POST

**Total Receivable: \$873,482.77**



**Creative Labs Preference Analysis - Payment detail**

**Exhibit D**

Vendor Name	Check Clear Date	Check Number	Paid Amount
CREATIVE LABS	8/12/2008	1033402	\$ 47,727.14
CREATIVE LABS	8/14/2008	1033494	\$ 272,905.39
CREATIVE LABS	8/19/2008	1033754	\$ 253,055.42
CREATIVE LABS	8/21/2008	1033837	\$ 120,510.65
CREATIVE LABS	9/5/2008	1034388	\$ 52,340.71
CREATIVE LABS	9/9/2008	1034621	\$ 93,248.50
CREATIVE LABS	9/9/2008	1034548	\$ 61,431.01
CREATIVE LABS	9/11/2008	1034715	\$ 185,327.38
CREATIVE LABS	9/16/2008	1035027	\$ 36,569.82
CREATIVE LABS	9/16/2008	1034969	\$ 4,940.75
CREATIVE LABS	9/18/2008	1035128	\$ 272,931.96
CREATIVE LABS	9/23/2008	1035432	\$ 58,856.13
CREATIVE LABS	9/23/2008	1035374	\$ 177,926.96
CREATIVE LABS	9/25/2008	1035531	\$ 204,580.43
CREATIVE LABS	9/26/2008	1036497	\$ 62,388.00
CREATIVE LABS	10/2/2008	1035887	\$ 79,655.40
CREATIVE LABS	10/2/2008	1038154	\$ 959,262.40
CREATIVE LABS	10/9/2008	1036231	\$ 75,641.16
CREATIVE LABS	10/16/2008	1037731	\$ 117,943.93
CREATIVE LABS	10/17/2008	1036699	\$ 320,332.23
CREATIVE LABS	10/17/2008	1037731	\$ 4,088.07
CREATIVE LABS	10/20/2008	1036753	\$ 31,242.66
CREATIVE LABS	10/21/2008	1036809	\$ 18,448.50
CREATIVE LABS	10/23/2008	1038035	\$ 597,099.05
CREATIVE LABS	10/24/2008	1037780	\$ 514,461.58
CREATIVE LABS	10/30/2008	1037780	\$ 31,588.50
CREATIVE LABS	11/7/2008	1038035	\$ 903,420.00
<b>Total Check Amount</b>			<b>\$ 5,557,923.73</b>



**Creative Labs Preference Analysis - Payment detail**

**Exhibit E**

Vendor Name	Check Clear Date	Check Number	Paid Amount
CREATIVE LABS	9/5/2008	1034388	\$ 52,340.71
CREATIVE LABS	9/9/2008	1034621	\$ 93,248.50
CREATIVE LABS	9/9/2008	1034548	\$ 61,431.01
CREATIVE LABS	9/11/2008	1034715	\$ 185,327.38
CREATIVE LABS	9/16/2008	1035027	\$ 36,569.82
CREATIVE LABS	9/16/2008	1034969	\$ 4,940.75
CREATIVE LABS	9/18/2008	1035128	\$ 272,931.96
CREATIVE LABS	9/23/2008	1035432	\$ 58,856.13
CREATIVE LABS	9/23/2008	1035374	\$ 177,926.96
CREATIVE LABS	9/25/2008	1035531	\$ 204,580.43
CREATIVE LABS	10/2/2008	1035887	\$ 79,655.40
CREATIVE LABS	10/9/2008	1036231	\$ 75,641.16
CREATIVE LABS	10/17/2008	1036699	\$ 320,332.23
CREATIVE LABS	10/20/2008	1036753	\$ 31,242.66
CREATIVE LABS	10/21/2008	1036809	\$ 18,448.50
<b>Total Check Amount</b>			<b>\$ 1,673,473.60</b>

